



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable O. P. Lockhart, Chairman
Board of Insurance Commissioners
Austin, Texas

Dear Sir:

Attention: Mr. D. B. Barrow

Opinion No. 0-3866
Re: Under H. B. No. 263, Acts
of the 47th Legislature,
is the premium on the bond
of the custodian payable
by the State?

Your letter of recent date requesting an opinion
of this department upon the above stated question has been
received.

We quote from your letter as follows:

"House Bill 263, passed by the Forty-Seventh
Legislature, changed the method of paying for the
services and expenses of custodians provided for
in Article 4742.

"You will note upon a reading of the Bill
that the fees secured from life insurance compan-
ies for registered policies are to be disposed of
by the Commissioner in payment of annual rental
of safety deposit boxes, 'the payment of the com-
pensation and expense of a competent, reliable
representative of the Life Insurance Commissioner
to be appointed by him who shall have direct
charge of the securities and safety deposit boxes
containing the same. . .'

"Under the provisions of this law we have sub-
mitted to the Comptroller request for voucher to
pay for the bond of Custodian Clifford Jackson of

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Dallas, Texas. This Custodian has been duly appointed by the Commissioners. He is required by us to be bonded in the amount of \$30,000.00 to protect the safe handling of securities under his care and control. The securities which he has charge of at the present time approximate \$63,000,000.00.

"The Comptroller under date of August 4 has declined to pay this expense, citing us to opinion from your Department dated September 16, 1933, and rendered by Assistant Attorney General Gaynor Kendall, which opinion the Comptroller considers prohibits him from paying the expenses in this case."

House Bill No. 263, Acts of the 47th Legislature, 1941, amending Article 4742 of Chapter 3, Title 78, Revised Civil Statutes of Texas, reads as follows:

"Every company making deposit under the provisions of this Chapter shall pay to the Life Insurance Commissioner of the State of Texas for each certificate placed on registered policies or annuity bonds issued by the company, after the original or first deposit is made hereunder, a fee of Twenty-five (25) cents; and the fee so received shall be disposed of by the said Life Insurance Commissioner as follows:

"1. The payment of the annual rental or hire of the safety deposit fireproof box or vault mentioned in Article 4741.

"2. The payment of the compensation and expense of a competent and reliable representative of the Life Insurance Commissioner, to be appointed by him, who shall have direct charge of the securities and safety deposit boxes containing the same, and through whom and under whose supervision the insurance company may have access to its securities for the purposes provided in this Chapter.

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"'3. The payment of the expense incurred in connection with the certification, registration, and valuation of such policies or annuity bonds.

"'4. The Balance of such fees shall be paid to the State Treasurer to the credit of the general fund.'

"Sec. 2. The fact that there is now no adequate law permitting the payment of the expenses incurred in connection with the certification, registration, and valuation of policies registered and certified to under the provisions of Article 4741 of the Revised Civil Statutes of Texas, 1925, out of the fees paid by the insurance companies issuing such registered policies, creates an emergency and an imperative public necessity that the Constitutional Rule requiring that bills be read on three several days in each House be suspended, and the same is hereby suspended, and that this Act shall take effect and be in force from and after its passage, and it is so enacted."

Senate Bill No. 423, Acts of the 47th Legislature, 1941, which is the appropriation bill for executive and administrative departments of the state government, under the heading of "Board of Insurance Commissioners" provides in part:

"All fees received under the provisions of Article 4742 shall be deposited in the State Treasury and properly disposed of as provided by law. All or so much thereof as may be necessary are hereby appropriated for salaries, maintenance, travel and contingent expenses necessary for administering the provisions of Article 4740, 4741 and 4742 of the Revised Civil Statutes, and by amendments thereto, during each of the fiscal years ending August 31, 1942, and August 31, 1943."

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. We understand that the custodian above mentioned is not required by law to be bonded, however, the Board of Insurance Commissioners has determined in its discretion that the custodian shall be bonded in the amount of \$30,000 to protect the safe handling of securities under his care and control.

We find in the appropriation bill relative to the Insurance Department of the State of Texas certain appropriations for insurance and bond premiums. However, we think that these appropriations to pay bond premiums must be used to pay the premiums on bonds required by law. It appears that the appropriation bill provides no sum of money specifically for the payment of bond premiums of the above mentioned custodian.

As stated in our Opinion No. O-2092:

"It is the rule that an officer or agent of the state is allowed only such compensation and emoluments as are expressly conferred upon him as remuneration for the discharge of his official duties as an agent of the state. *McCalla vs. City of Rockdale*, 112 Tex. 209, 246 S. W. 654. It follows that any public officer or agent who demands mileage, fees or expenses must point out some statute authorizing its allowance. Where a duty requiring an expenditure of money is imposed upon a public officer or agent, and no provision is made to defray the same, such an officer or agent is deemed to be repaid for expenses incurred in the discharge of such duty by whatever compensation is allowed and paid to him for his services as such public agent."

It is therefore apparent, that in order for the above mentioned custodian to be entitled to reimbursement for the expenses incurred by him in furnishing the bond required by the Board of Insurance Commissioners, there must exist some statutory provision for the allowance and payment

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of the same.

There is no provision of the general statutes or the current appropriation bill, that we have been able to find, which authorizes reimbursement to the above mentioned custodian for expenses incurred by him in furnishing the bond required by the Board of Insurance Commissioners.

Since there is no provision of the statute or specific item in the appropriation bill contemplating reimbursement by the state to the custodian for the expenses incurred by him in furnishing the bond required by the Board of Insurance Commissioners, you are respectfully advised that it is the opinion of this department that such bond premiums can not be lawfully paid by the State, but the premiums of such bond should be paid personally by the custodian.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

AW:lh

APPROVED AUG 21, 1941

Gen. M. M. Mann

ATTORNEY GENERAL OF TEXAS

